

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Applicant SIL v Scheme Manager, Victim Assist
Queensland, Department of Justice and Attorney-General
[2021] QCAT 237*

PARTIES: **APPLICANT SIL**
(applicant)

v

**SCHEME MANAGER, VICTIM ASSIST
QUEENSLAND, DEPARTMENT OF JUSTICE AND
ATTORNEY GENERAL**
(respondent)

APPLICATION NO/S: GAR510-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 13 July 2021

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS:

- 1. The decisions under review made on 14 October 2019 and 28 November 2019 are set aside, and the matter is returned for reconsideration with a direction that the requirements of s 25(2) of the *Victims of Crime Assistance Act 2009* (Qld) are met.**
- 2. Publication, other than to the parties of this proceeding, of the names of the applicant, Person A, Person B and Person C is prohibited, under s 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).**
- 3. Publication of the documents filed by the parties as evidence in these proceedings is prohibited save as was and is necessary for the parties to engage in and progress these proceedings and to the extent they are referred to in these reasons, under s 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – general administrative review – where the applicant was refused financial assistance under the *Victims of Crime Assistance Act 2009* (Qld) – where the applicant sought a review of decision

made by Victim Assist Queensland – whether applicant a primary victim of domestic violence

Domestic and Family Violence Protection Act 2012 (Qld), s 8

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66

Victims of Crime Assistance Act 2009 (Qld), s 25, s 26, s 37, Schedule 3

APPEARANCES & REPRESENTATION:

Applicant: Fuller and White Solicitors

Respondent: Self-represented

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*

REASONS FOR DECISION

- [1] Women claiming to be the victims of domestic violence need to be heard before they can be believed.
- [2] In this case, the applicant speaks very limited English. As a result of this language barrier, the Queensland Police Service spoke only to the applicant's husband on the night of 9 December 2017. Without hearing from the applicant, the Queensland Police Service proceeded to characterise her as 'the offender'. This approach then infected the Logan Hospital, who prepared a discharge letter apparently based on information provided by the Queensland Police Service.
- [3] I have heard from the applicant through material prepared with the assistance of an interpreter. For the reasons set out below, I have believed her.

Procedural history

- [4] On 12 February 2019, the applicant made an application for financial assistance under the *Victims of Crime Assistance Act 2009 (Qld)* ('the Act').
- [5] On 14 October 2019, the respondent refused the application for financial assistance.
- [6] On 17 October 2019, the applicant requested an internal review of the respondent's decision.
- [7] On 28 November 2019, the respondent confirmed its original decision.
- [8] On 19 December 2019, the applicant lodged an application to review the respondent's decision with the Tribunal.

Legislative framework

- [9] Section 37 of the Act provides:

A primary victim of an act of violence is eligible for assistance.

- [10] Section 26(1) of the Act defines a 'primary victim' as follows:

A *primary victim*, of an act of violence, is a person who dies or is injured as a direct result of the act being committed against the person.

[11] Section 25 of the Act defines an ‘act of violence’ as follows:

- (1) An *act of violence* is a crime or a series of related crimes, whether committed by 1 or more persons, that—
 - (a) are committed in Queensland; and
 - (b) directly result in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened.

...
- (2) Also, an *act of violence* is domestic violence, or a series of related acts of domestic violence, that—
 - (a) is committed in Queensland; and
 - (b) directly results in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened; and
 - (c) is not an act of violence under subsection (1).
- (3) In this chapter, a reference to an act of violence in relation to an application for assistance includes a reference to an alleged act of violence.

[12] Schedule 3 of the Act defines ‘domestic violence’ as follows:

domestic violence see the Domestic and Family Violence Protection Act 2012.

[13] ‘Domestic violence’ is defined in s 8 of the *Domestic and Family Violence Protection Act 2012* (Qld) as follows:

- (1) *Domestic violence* means behaviour by a person (the *first person*) towards another person (the *second person*) with whom the first person is in a relevant relationship that—
 - (a) is physically or sexually abusive; or
 - (b) is emotionally or psychologically abusive; or
 - (c) is economically abusive; or
 - (d) is threatening; or
 - (e) is coercive; or
 - (f) in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else.
- (2) Without limiting subsection (1), domestic violence includes the following behaviour—
 - (a) causing personal injury to a person or threatening to do so;
 - (b) coercing a person to engage in sexual activity or attempting to do so;
 - (c) damaging a person’s property or threatening to do so;
 - (d) depriving a person of the person’s liberty or threatening to do so;

- (e) threatening a person with the death or injury of the person, a child of the person, or someone else;
- (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
- (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
- (h) unauthorised surveillance of a person;
- (i) unlawfully stalking a person.

Evidence

- [14] The application centres on an alleged incident of domestic violence on 9 December 2017.
- [15] By way of background, the applicant is a citizen of Taiwan. She speaks ‘very limited’ English.¹
- [16] The applicant married Person A on 16 August 2016.² Person A sponsored the applicant for a spouse visa.³
- [17] The applicant and Person A have a daughter together, Person B.⁴
- [18] The applicant’s account of the incident on 9 December 2017 at an address in Queensland is as follows:⁵

On 9 December 2017, [Person A] and I were arguing about money because I felt that he was always withholding this from me. I was upset and I threw his snacks on the floor and into the bin. [Person A] then punched me in the face which broke my glasses. He also grabbed my throat and squeezed it. [Person A] then hit me, so I picked up the broomstick and whacked him in self-defence to get away from him. I moved to sit on the couch to give us some space. I could make out that [Person A] was coming towards me with something in his hand. I could not see clearly as my glasses were broken. As [Person A] came closer, I pushed him away with my hand. I then saw blood coming out of my left middle finger had cut it (sic).

There was a lot of blood coming out of my finger. I was very scared and was trying to find something to stop it. [Person A] just watched me and did not help. I went upstairs to get a cloth to wrap my hand to stop the bleeding. I also tried to call my friend [Person C] for help but she did not answer. I eventually got through to [Person C] on the phone and explained to her the incident that occurred that night. I told [Person C] that [Person A] wouldn’t take me to the hospital because his car registration had expired. [Person C] was with her boyfriend and he said I should call the police. I took photos of my injuries on the phone. I never posted the photos to Facebook ...

¹ Affidavit of the applicant dated 16 July 2020, [6].
² Affidavit of the applicant dated 16 July 2020, [16].
³ Affidavit of the applicant dated 16 July 2020, [54].
⁴ Affidavit of the applicant dated 16 July 2020, [17].
⁵ Affidavit of the applicant dated 16 July 2020, [24]-[30].

I felt that my life was in danger because I understood that [Person A] had a knife. I called the police and said, 'my husband wants to kill me'. I was very frustrated because I could not express myself in English. I tried to ask for an ambulance, but I did not know how to say this in English and I ended the call. At no point was I asked whether I needed an interpreter.

Roughly one hour later, the police arrived, and I answered the door. The police kept telling me 'don't move'. The police asked if I could speak English. I said words to the effect of 'yes, but not very well'. I felt dizzy and I went into the garage to lay down on the yoga mat. Whilst laying down, I kept asking the police 'I want to see my baby. I'm worried about my baby'. The police said 'no'. I saw one police officer holding [Person B]. Someone did check my finger and helped me to bandage it up. I also saw [Person A] being taken away by one of the police officers and he entered a police car.

When the ambulance arrived, I asked the police officer if [Person B] can come with me. The police officer said no. I was then taken away by the ambulance. A student paramedic in the ambulance spoke a little bit of Mandarin, and I conversed briefly with him.

The police officer did not speak with me on 9 December 2017, and accordingly the police report is based entirely on [Person A]'s version of events. Although the student paramedic gave me the gist of the transaction, they did not give a sufficiently reliable detailed account of events.

The police did not offer nor did they call an interpreter to assist me with my dealings with them.

- [19] Attached to the affidavit were photographs of the applicant's hand injury.
- [20] The affidavit was accompanied by an attestation by a Mandarin interpreter that the affidavit had been read to the applicant before she signed it.
- [21] The applicant provided a letter from the Immigrant Women's Support Service dated 17 September 2019. The letter stated in part:⁶

[The applicant] reported an incident in which [Person A] physically assaulted her by punching her in the face. He also attacked her with a knife, resulting in [the applicant] sustaining a cut to her hand, which required hospital admission. [The applicant] also reported other abusive behaviour from [Person A], including ongoing incidents of strangulation, financial, emotional, verbal and social abuse.

[The applicant's] reports and presentation are consistent with a range of domestic violence indicators and impacts, both widely researched and highlighted in relevant literature in Australia and overseas. She was subjected to severe violence, resulting in injury and admission to hospital. [The applicant] experienced control and coercion through threats of deportation and losing her child.

- [22] The Queensland Ambulance Service report of their attendance stated as follows:⁷

pt spoke little to no English, information gathered via our student whom spoke to the pts native language, pt was in an altercation with her partner before the sun went down where she was holding a knife and the knife was pulled out of her hand causing a deep 2 cm lac to her L middle finger, she was then struck on the L side of the face causing a small abrasion and some small bruises to

⁶ Respondent's bundle of documents, p 137.

⁷ Respondent's bundle of documents, p 101.

her R forearm and L clavical, pt denies LOC with a head strike, pt did not place pressure on lac when occurred, QAS noted blood throughout the house where pt had been sitting before QAS arrival ...

- [23] The applicant's discharge letter from Logan Hospital dated 10 December 2017 stated as follows:⁸

The patient presented with a laceration to her left middle finger and abrasion to left eye after an alleged altercation with her husband where she attacked him with a knife. There was reportedly a significant amount of blood loss.

In the ED she had a pre-syncope event and was found to have a sBP of 65. She was given 2L of IV saline resus and responded well to this. She was kept in short stay unit for observation. Her BP remained stable at 90 for the duration of her (sic) stay in ED and was asymptomatic.

Her left middle finger – tendons were intact on examination and it was sutured in the ED.

For discussions with the patient it was evident that she was struggling with possible post natal depression and feelings of isolation since the birth of her daughter. There is also recurrent domestic violence in the home. She was reviewed by social work and mental health. Social work will see her again as an outpatient.

- [24] Progress notes of the review by social work and mental health provided as follows:⁹

On review: (interview conducted through interpreter)

She recounted the events of last night. She seemed to contradict herself with the story repeatedly and it was not clear exactly what had happened. She states that they began arguing over money (he has control of this), her visa and driver's passport which she states she has been asking him to arrange but he hasn't. He then punched her in the face, knocking off her glasses and then she was unable to see properly. She reports he then came at her with a knife and as she defended herself her finger got cut.

She then reports she got a broom and defended herself with this and this is how his arm got lacerated. When asked how a broom could cut his arm she reported it was metal and very thin and then that it had broken on his arm. She reports she had the broom because she was sweeping the floors. When I attempted to clarify why she would be doing this just after having her hand cut and bleeding she stated she was sweeping one handed.

She reports that their relationship had been ok at the beginning although he speaks no mandarin and her English is broken. Their problems became violent about the time he gave up work and their fights usually stem from finances, her wanting him to get a job and her visa. The violence appears to be both ways. She reports he has punched, hit and shoved her, she has a scar on her back from when he threw something at her once. She also reports he has tried to strangle her with his hands previously. She reports she often acts aggressively back in these circumstances and has often thrown things. She reports feeling she would be safe to return home today and will just try to stay away from him and not have an argument. She denies ever fearing for her life and he has never threatened same. She denies baby has ever been involved.

⁸ Respondent's bundle of documents, p 31.

⁹ Respondent's bundle of documents, pp 47-48.

She reports that her mood is good when not around husband and enjoys time with her baby ...

Wants help with her visa and accessing supports for the violence within her relationship ...

Discussed future of relationship – states she has thought of leaving. Needs to get her visa sorted first. Wants to ensure she can retain custody of baby.

- [25] The hospital notes indicate that the social worker spoke to the Queensland Police Service, who indicated that they had enacted a domestic violence order with Person A as the aggrieved and the applicant as the respondent. It was reported to the social worker by the Queensland Police Service that Person A suggested that the applicant had been depressed and acting irrationally, and that she attacked him with the knife.¹⁰
- [26] The Queensland Police Service report of the incident describes the applicant as ‘the offender’ and Person A as ‘the victim’. The report stated as follows:¹¹

Advised: The offender and victim are in a relationship and reside together at the job address. The couple had an argument over money and the offender has become enraged and hit the victim with a dust pan broom. The offender has then grabbed a knife from the kitchen and swung it at the victim causing a laceration to his left upper arm. The victim has then managed to disarm the offender and has held the knife by his side. The offender has then attempted to grab the knife back from the victim and has cut one of her fingers. The offender has then washed the knife and placed it in the dish rack. The offender has bleed (sic) through out the dwelling. The couples (sic) child was present at the time. The victims (sic) brother attended the address and took the child to a place of safety. The offender was transported to hospital by QAS.

Observed: The offence location is a town house in a gated unit complex. Observed wet red stains which appeared to be blood on the garage, laundry, dining room and lounge room floors. There was a clothing item on the lounge suite soaked in blood as well as pools of blood on the lounge suite. On the lounge room floor was a child play pen covered in blood smears. Blood droplets were also observed on the second level, on the main bedroom floor and on the fitted sheet on the bed. On the dining room floor observed a broken dust pan broom. The knife was also observed in the dish rack and it had a black handle and black blade. There were no obvious signs of blood on the knife. Further observed injuries to the victim consisting of a laceration on the top of left arm, scratches on the left forearm, elbow and stomach.

Conducted: Due to the relationship status of the offender and victim general photographs only were taken of the scene. CIB attended the scene and seized the knife. General photographs also taken of the victim and his injuries as indicated by the victim.

Consideration

- [27] It is useful to begin by putting the evidence set out above in context.
- [28] Firstly, the applicant’s evidence was that the Queensland Police Service did not speak to her about the incident on 9 December 2017. This is not disputed in the material provided by the Queensland Police Service. The Queensland Police Service report therefore is no more than a record of Person A’s version of events. It

¹⁰ Respondent’s bundle of documents, p 53.

¹¹ Respondent’s bundle of documents, p 11.

can in no way represent an evaluation by the Queensland Police Service of the respective accounts of the applicant and Person A.

- [29] Secondly, the applicant speaks very limited English. Her conversation with the Queensland Ambulance Service was through a student paramedic, with some knowledge of Mandarin. In those circumstances, there is at the very least the possibility of inaccuracies in the recording of the applicant's account. It is also not clear whether the information recorded by the Queensland Ambulance Service's records was obtained from the applicant or from the Queensland Police Service.
- [30] Thirdly, the discharge letter from the Logan Hospital contains information that came from the Queensland Police Service, and not what the applicant told staff at the hospital. For example, the letter stated that the applicant attacked Person A with a knife and that she was possibly suffering from postnatal depression. The clinical notes record the applicant as reporting that Person A attacked her with a knife, and that she was in a good mood away from Person A and enjoying time with her baby.
- [31] Fourthly, the clinical notes from Logan Hospital refer to the applicant as having been interviewed through an interpreter. At the time of the interview, I note that:
 - (a) the applicant had recently been injured by a knife in an altercation with Person A; and
 - (b) the applicant had also suffered a pre-syncopal event, and required IV saline to raise her blood pressure.
- [32] In these circumstances, there is at the very least the possibility that any contradictions and lack of clarity in the applicant's account may be accounted for by her physical state at the time of interview.
- [33] Having regard to these matters, it appears to me that the applicant was effectively denied a voice on the night of 9 December 2017 due to her very limited English skills. In particular, the Queensland Police Service did not speak to her, but their report of the incident nevertheless proceeded to characterise her as 'the offender'. While Logan Hospital obtained an interpreter to interview the applicant, key elements of the information contained in the discharge letter were drawn from information provided by the Queensland Police Service and not from the applicant.
- [34] In my view, many of the discrepancies in the version of events given by the applicant arise from language difficulties and/or her physical state. In her interview at the hospital conducted through an interpreter, and in her affidavit before the Tribunal prepared with the assistance of an interpreter, the applicant provided consistent accounts including the following elements:
 - (a) the applicant hit Person A with a metal broom stick or dust pan, causing a laceration on his left arm;
 - (b) the applicant was punched in the face by Person A, either breaking or knocking off her glasses; and
 - (c) the applicant was attacked with a knife, causing a laceration to her hand.
- [35] I am satisfied that it is more probable than not that the events took place as described by the applicant.
- [36] I note that this conclusion is supported by the letter from the Immigrant Women's Support Service, who have considerable experience in dealing with these issues. It

needs to be emphasised that it is a two stage process to get permanent residence in Australia by means of a spouse visa. Applicants for a spouse visa in the first instance are granted a temporary visa. Subject to limited exceptions (which include domestic violence), they are required to be in a genuine and continuing relationship with the sponsor for a period of two years before a permanent visa can be granted. This would have given Person A as the sponsor considerable power over the applicant during the two year period before a permanent visa was granted.

- [37] In relation to Person A's account given to the Queensland Police Service, there is nothing in the material before me to indicate that he received attention from the Queensland Ambulance Service or was taken to hospital for lacerations to his left arm from allegedly being attacked with a knife by the applicant. I find this to be remarkable, given the applicant's requirement for medical attention after having been injured with the same knife. Without further details of Person A's injuries, it appears to me that this lack of need of medical attention is more consistent with an injury caused by a metal broom handle or dust pan than a knife. Accordingly, I place little weight on his version of events.
- [38] I note that the standard of proof to be applied in this matter is the balance of probabilities. If I had the benefit of seeing both the applicant and Person A cross-examined, it is possible that this might have led me to reach a different conclusion. However, I am limited to the evidence before me and have reached the conclusions set out above.

Disposition

- [39] Given my findings above, I am satisfied that the applicant was a victim of an act of domestic violence (as defined) in Queensland on the night of 9 December 2017, which directly resulted in an injury to her.
- [40] I will set aside the decision under review, and return the matter to the respondent for reconsideration with a direction that the requirements of s 25(2) of the Act are met.
- [41] For completeness, I note that the applicant also alleged a number of other incidents of domestic violence. Given that my findings in relation to the incident of 9 December 2017 are sufficient to engage s 25(2) of the Act, it is not necessary for me to make findings in relation to the other allegations. However, to the extent that it is desirable for me to express a view in relation to the other incidents, I briefly do so as follows:
- (a) The applicant provided sworn affidavit evidence as to other alleged domestic violence incidents which occurred between March 2018 and January 2019.
 - (b) With the exception of incidents on 27 March 2018 and 5 April 2018, there is no evidence before me which contradicts the applicant's version of events. In those circumstances, her sworn evidence should be accepted.
 - (c) In relation to the incidents on 27 March 2018 and 5 April 2018, Person A made complaints to the Queensland Police Service.¹² The applicant submitted that Person A used complaints to the Queensland Police Service as a means of controlling her.¹³ I would be inclined to accept this submission, given that there is no record of the Queensland Police Service ever having conducted an investigation in relation to either incident. The Queensland Police Service

¹² Respondent's bundle of documents, pp 18 and 23.

¹³ Respondent's bundle of documents, p 136.

simply recorded Person A's version of events without speaking to the applicant.

Non-publication order

- [42] I order that the publication of the names of the applicant, Person A, Person B and Person C are prohibited other than to the parties to the proceeding pursuant to s 66(1)(c) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld).
- [43] I also order, pursuant to s 66(1)(a) of the *Queensland Civil and Administrative Tribunal Act*, that the publication of documents filed by the parties as evidence in the proceedings is prohibited save as was and is necessary for the parties to engage in and progress these proceedings and to the extent they are referred to in these reasons.